

DG 05-065

NORTHERN UTILITIES, INC.

**Petition for Approval of an Amended
Special Firm Gas Transportation Agreement
with Foss Manufacturing Company, Inc.**

Order Approving Second and Third Amendments to Special Contract

ORDER NO. 24,478

July 1, 2005

I. BACKGROUND

On April 4, 2005, Northern Utilities, Inc. (Northern), a public utility engaged in the business of distributing natural gas in the Seacoast area of New Hampshire, filed with the New Hampshire Public Utilities Commission (Commission) a Petition for Approval of an Amended Special Firm Gas Transportation Agreement with Foss Manufacturing Company, Inc. (Foss).¹ The Petition requested approval of a Second Amendment between Northern and Foss dated as of March 1, 2005 (Second Amendment) extending the term of the Special Firm Gas Transportation Agreement dated as of October 28, 1999 (Initial Agreement) and providing for an inflation adjustment to the rates and charges payable by Foss.

Northern's filing included an explanatory statement supporting the filing, copies of the Initial Agreement, an Amendment to Agreement between Northern and Foss dated as of January 1, 2000 (First Amendment),² a Letter Agreement between Northern and Foss dated March 8, 2005 (Letter Agreement),³ and Northern's customer specific marginal cost analysis.

¹ Foss' manufacturing plant is located in Hampton, New Hampshire and produces engineered fabrics.

² The First Amendment was entered into in order to comply with the Commission's approval of the Initial Agreement. See *Northern Utilities, Inc.*, Order No. 23,381, 85 NH PUC 6 (January 6, 2000). The First Amendment provided for a 5 year term with any extensions to be subject to Commission approval. The Initial Agreement as amended by the First Amendment is referred to as the Special Contract.

³ The Letter Agreement provided that Foss will pay the applicable tariff rate back to March 1, 2005 in the event that the Commission does not approve the amended Special Contract.

Northern's filing also included a Motion for Protective Order requesting confidentiality of specific pricing information, cost information, customer-specific marginal cost information and supporting financial analyses. According to Northern, disclosure of this material would disadvantage Northern in price negotiations with customers or potential customers who have alternative options and would impair Northern's future bargaining positions and its ability to obtain the maximum possible contribution to fixed costs.

On June 7, 2005, Northern filed with the Commission an executed Third Amendment to the Agreement between Northern and Foss dated as of March 1, 2005 (Third Amendment), increasing the Monthly Minimum Fixed Charge to be paid to Northern by Foss.⁴ Northern requested that the Commission approve the Third Amendment, and protect the Third Amendment under Northern's previous Motion for Protective Order.

II. POSITIONS OF NORTHERN AND COMMISSION STAFF

Foss is currently a firm transportation customer of Northern and purchases gas through a third party supplier. Foss is Northern's second largest customer and has tri-fuel capability, being able to operate on natural gas, propane or No. 2 oil. Northern is currently charging Foss a discounted firm transportation rate specified in the Special Contract.

In its Petition, Northern asserts that the Special Contract, as proposed to be amended by the Second Amendment, provides a revenue stream to Northern that benefits both Northern and its firm ratepayers. The proposed pricing terms will mimic those of the Special Contract, but with an annual inflation escalator. Foss can continue to operate using natural gas rather than an alternative energy source and will continue to provide Northern with a guaranteed

⁴ The Special Contract as proposed to be amended by the Second and Third Amendments is referred to as the Amended Special Contract.

revenue stream that may escalate with inflation through the application of the annual inflation escalator provision. Northern upgraded its system to serve Foss under the terms of the Special Contract and no additional system improvements are required to continue service under the Amended Special Contract.

Northern updated its last filed Marginal Cost of Service Study (Docket No. DR 00-046) to account for inflation and determine the marginal costs to serve Foss. Long-run marginal costs reflect the full costs resulting from a small change in load, including variable costs, direct plant-related costs such as transmission and distribution facilities, and indirect costs such as administrative and general expenses. The updated analysis showed that the rates in the Special Contract as proposed to be amended by the Second Amendment exceed Northern's long-run marginal cost to serve Foss. Although expected revenues exceed long-term marginal costs, the minimum payment requirements alone did not.

Northern submitted an updated Value of Service (VOS) analysis in response to a Commission Staff (Staff) data request. The analysis indicated that the VOS to Foss had increased slightly from when the rates were established in the Special Contract. In addition, actual usage over the five years of the Special Contract greatly exceeded the must-take provisions and the greatest volumes were taken over the most recent two years. In Staff's view, the increase in the VOS and heavy usage over the past two years indicate that a rate increase at this time would be appropriate. At Staff's request, Northern approached Foss regarding an increase in the minimum payment requirements to maintain the same relationship between the minimum payment rate and the VOS as was established in setting the rate in the Special Contract. Foss agreed to the proposed increase and Northern submitted the Third Amendment

reflecting the increased rate. Under the terms of the Third Amendment the minimum payment requirement exceeds Northern's long-term marginal costs for the 5 year term of the contract and generates additional revenue for Northern while still providing Value of Service for Foss.

On June 14, 2005, Staff filed a recommendation that the Commission approve the Amended Special Contract. Staff stated that it had reviewed the filing and engaged in informal discovery with Northern. Staff noted that the rates negotiated in the Amended Special Contract exceed the marginal cost of serving Foss and that approval would enable Northern to retain the load increase experienced under the terms of the original contract that might otherwise be lost to the use of alternate fuels. Staff further noted that the Amended Special Contract includes an annual inflation escalator provision that should ensure the revenues earned under the terms of the contract will continue to exceed long-term marginal costs to serve Foss, as increased costs due to inflation will be offset by a comparable increase in revenues.

Staff stated that the Third Amendment addresses its concern that the minimum payments under the must-take provisions of the Amended Special Contract did not exceed the long-term marginal costs and that the VOS analysis as updated from that used to set rates in the Special Contract indicated a higher rate would be appropriate when compared to the cost of Foss' alternative fuels. Staff noted that actual usage over the five-year term of the Special Contract greatly exceeded the must-take provisions and that the greatest volumes were taken over the most recent two years, a further indication that the rate increase at this time is appropriate.

III. COMMISSION ANALYSIS

We have reviewed the Amended Special Contract and the supporting materials, pursuant to RSA 378:18, which gives the Commission the authority to approve special contracts when “special circumstances exist which render such departure from the general schedules just and consistent with the public interest” Based upon that review and Staff’s recommendation, we will approve the Amended Special Contract. In approving this contract, we note that Foss has the capability to utilize alternate fuels. Thus, there are special circumstances that qualify it for departure from standard tariff rates pursuant to RSA 378:18. We also note that the rates negotiated with Foss exceed Northern’s long-run marginal cost, a requirement we established in *Re Generic Discount Rates*, Order No. 20,633, 77 NHPUC 650, 655 (1992).

We find that the increase in the rate Northern charges Foss contained in the Amended Special Contract is both appropriate and reasonable, as it increases revenues to be realized over the life of the contract and guarantees that revenues exceed Northern’s long-run marginal costs. By maintaining the relationship between the Value of Service and rates as set in the Special Contract, sales history under the Special Contract provide a very strong indication that actual usage under the Amended Special Contract will generate revenues in excess of the minimum guaranteed payments. Foss continues to receive a favorable rate for natural gas when compared to its alternative fuels and Foss’ continued use of natural gas will lower the average system costs of transporting gas for all of Northern’s firm customers, thereby moderating future revenue requirements and enhancing economies of scale.

Northern’s Motion for Protective Order seeks to protect from disclosure the pricing details and customer-specific information in the Amended Special Contract. N.H. Code Admin. Rules Puc 204.06 provides that “the Commission shall grant confidentiality upon its

finding that the documents sought to be made confidential are within the exemptions permitted by RSA 91-A:5,IV, or other provisions of law based on the information submitted. . . .” RSA 91-A:5, IV provides an exception to the general rule of public disclosure for “confidential, commercial or financial information.” Interpreting this provision, the New Hampshire Supreme Court has instructed agencies of state government to construe this exemption narrowly, applying a balancing test in order to determine whether “the asserted private, confidential, commercial or financial interest” is outweighed by “the public's interest in disclosure.” *Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540, 552-53 (1997). Based on Northern’s representations and the Commission’s previous treatment of similar pricing information, cost information, customer-specific marginal cost information and supporting financial analyses, we find that the benefits of non-disclosure in this case outweigh the benefits to the public of disclosure. The Commission rules that the information contained in the filing for which protective treatment is sought should be exempt from public disclosure pursuant to RSA 91-A:5, IV and Puc 204.06.

Based upon the foregoing, it is hereby

ORDERED, that the proposed Second and Third Amendments to the Special Contract are APPROVED; and it is

FURTHER ORDERED, that Northern’s Motion for Protective Order is GRANTED, subject to the on-going authority of the Commission, on its own motion, or on the motion of Staff, any party, or any member of the public, to reconsider this order should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this first day of

July, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary